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Forest S. Baker IV

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EXAMINER

ELAHEE, MD S

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/920,072	<b>Applicant(s)</b> BAKER, FOREST S.	
	<b>Examiner</b> MD S. ELAHEE	<b>Art Unit</b> 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-18,20,21,76-93 and 96-116 is/are pending in the application.
- 4a) Of the above claim(s) 39-75 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-18,20,21,76-93 and 96-116 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This action is responsive to an amendment filed on 07/03/2007. Claims 1-6, 8-18, 20, 21, 76-93 and 96-116 are pending. Claims 7, 19, 22-38, 94 and 95 have been previously cancelled. Claims 39-75 have been previously withdrawn.

### ***Response to Arguments***

2. Applicant's arguments filed on 07/03/2007 Remarks regarding claims 76-93 have been fully considered but are moot in view of the new ground(s) of rejection which is deemed appropriate to address all of the needs at this time.

3. Applicant's arguments in the 07/03/2007 Remarks regarding claims 1-6, 8-18, 20, 21 and 96-116 have been fully considered but they are not persuasive because of the following:

Regarding claim 1, the applicant argues on pages 32-34 that neither Szlam nor Nakatsu suggests the interleaving of interjection into a script presentation. This argument is not relevant. It is because, the applicant did not claim limitation. Instead, the applicant claims interleaving live responses and recorded scripts. Szlam teaches this limitation (see Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

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Thus, the rejection of the claim will remain. The rejection of the claims 19 and 20 will remain for the same reasons as discussed above with respect to claim 1.

Regarding claims 96 and 107, the applicant argues on pages 22-24 that Szlam patent does not teach that the system can repeatedly alternate back and forth between a live voice, a scripted response and/or an interjection. This argument is not relevant. It is because, the applicant did not claim limitation. Instead, the applicant claims interleaving live responses and recorded scripts. Szlam teaches this limitation (see Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8). Thus, the rejection of the claims in view of Szlam will remain.

#### ***Claim Objections***

4. Claim 76 is objected to because of the following informalities: regarding claim 76, the phrase “the group consisting of a human agent” in line 9 should apparently be “the group consisting of”. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 76-93 and 107-116 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The language of the claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.

7. Claims 76 and 107 recite a computer readable medium having computer executable instructions for performing a method. Claim language does not comply with the requirements of MPEP 2106.01.I. The “storage medium” is only recited once in the invention disclosure (Preamble of Claims 76 and 107). Since “medium” is not defined in the disclosure, it may encompass a variety of media ranging from a piece of paper to a carrier signal. Furthermore, “computer program” or “software” is merely a set of instructions. On the contrary, “memory”, “computer program” and “software” are well defined acceptable terminology in computer programming. Additionally, containing is not an acceptable linking word to associate “computer readable medium” to a “computer program”. Computer program is data structure. The claimed instructions are merely data structure. Data structures not claimed as embodied in computer-readable or machine-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer or machine. See, e.g., *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1754 (claim to a data structure per se held nonstatutory). Claims 76 and 107 fail to include practical application that produces either (1) tangible, concrete and useful result or (2) physical transformation. Therefore, since the claimed computer readable medium does not comprise instructions to cause a processor to perform the providing, initiating, executing and allowing functions of the claims then the Applicant has not

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complied with 35 U.S.C 101. Since claims 77-93 and 108-116 are dependent claims, these claims are also rejected under 35 U.S.C. 101.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 76-93 and 96-116 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 76, the phrase “the agent” in line 11 is indefinite. There are two different “human agent”. It is unclear which “agent” is being referred to by the phrase.

Claims 96 and 107 are rejected for the same reasons as discussed above with respect to claim 76. Since claims 77-93, 97-106 and 108-116 are dependent upon claim 1, claims 19-22, 27 and 28 are dependent upon claim 18 and claims 30-35 are dependent upon claim 29, these claims are also rejected.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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11. Claims 96-100,102-109,111-116 are rejected under 35 U.S.C. 102(b) as being anticipated by **Szlam** (US 5,511,112).

As to Claims 96-99, with respect to Figures 1-4E, **Szlam** teaches a method for customer contacting, the method comprising:

- providing a system with a contact, the interaction being selectable between human and computer delivery (Col. 9, line 51- Col. 10, line 8);

- initiating a call to the contact (Col. 9, lines 18-20); and

- allowing a human agent to selectively interleave responses to the contact from a human agent and a prerecorded message [i.e., one or more predetermined answers] selected by the agent from two different prerecorded messages [i.e., a script tree] (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

As to Claims 100,109, **Szlam** teaches the method of claim 96, wherein the recorded script is selected from audio recordings [i.e., computer-generated wave files, audio recordings, and synthesized voice] (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

As to Claims 102,112, **Szlam** teaches the method of claim 96, further comprising validating sales information (Col. 17, lines 26-29).

As to Claims 103,113, **Szlam** teaches the method of claim 96, further comprising updating a customer file (Col. 8, lines 21-25).

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As to Claims 104,114, **Szlam** teaches the method of claim 96, further comprising maintaining a history of recorded scripts played (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

As to Claims 105,115, **Szlam** teaches the method of claim 96, wherein interleaving further comprises deciding on intervention (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

As to Claim 106,116, **Szlam** teaches the method of claim 105, wherein deciding on intervention further comprises selecting between options including at least a live-voice response and a recorded response (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

As to Claims 107,108, with respect to Figures 1-4E, **Szlam** teaches a computer readable medium having stored thereon computer executable instructions for performing a method for contacting a customer, the method comprising:

- providing an integrated system for hybridized interaction with a contact, the interaction being selectable between human and computer delivery(Col. 9, line 51- Col. 10, line 8);

- initiating a call to the contact (Col. 9, lines 18-20);

- executing an interaction protocol to create an interaction with the contact (Col. 9, line 51- Col. 10, line 5); and

- allowing a human agent to interleave responses to the contact from a human agent and a prerecorded message [i.e., predetermined answers] selected by the agent from two different prerecorded messages [i.e., a script tree] (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).



As to Claim 111, **Szlam** teaches the method of claim 107, wherein executing an interaction protocol further comprises selecting a contact type (Col. 9, line 65- Col. 10, line 5).

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claims 1-4, 8-18, 20, 21, 76-80 and 83-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Szlam** (US 5,511,112) in view of **Nakatsu et al.** (US 5,787,151).

As to Claim 1, with respect to Figures 1-4E, **Szlam** teaches a method for customer contacting, the method comprising:

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providing a system for interaction with a contact, the interaction being selectable between human and computer delivery (Col. 9, line 51- Col. 10, line 8);

executing an interaction protocol to create an interaction with the contact (Col. 9, line 51- Col. 10, line 5);

initiating a call to the contact (Col. 9, lines 18-20); and

allowing an agent to selectively interleave live responses and prerecorded messages [i.e., recorded scripts], the recorded scripts selected from two different prerecorded messages (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8):

However, **Szlam** does not teach the two different prerecorded messages [i.e., recorded scripts] selected from two different menus [i.e., at least a script menu and an interjection menu]. **Nakatsu** teaches two different prerecorded messages [i.e., recorded scripts] selected from two different menus [i.e., at least a script menu and an interjection menu] (Col. 9, line 63- Col. 10, line 12, Col. 11, lines 43-46). Having the cited analogous art at the time the invention was made, it would have been obvious to one of ordinary skill in the art to add the recorded scripts selected from at least a script menu and an interjection menu to **Szlam's** invention for agents to transparently communicate with customers as taught by **Nakatsu's** invention in order to provide agents with monitoring of customers responses.

As to Claim 2, **Szlam** teaches the method of claim 1, wherein the executing an interaction protocol is done by one of a human agent and a computer script (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

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As to Claim 3, **Szlam** teaches the method of claim 1, wherein the recorded script further comprises recorded data for generating a human-sounding voice waveform (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

As to Claim 4, **Szlam** teaches the method of claim 1, wherein the recorded script is selected from audio recordings [i.e., computer-generated wave files, audio recordings, and synthesized voice] (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

As to Claim 8, **Szlam** teaches the method of claim 1, wherein executing an interaction protocol further comprises selecting a contact type (Col. 9, line 65- Col. 10, line 5).

As to Claim 9, **Szlam** teaches the method of claim 1, further comprising validating sales information (Col. 17, lines 26-29).

As to Claim 10, **Szlam** teaches the method of claim 9, wherein validating sales information is done by one of a human agent and a computer dialing system (Col. 17, lines 26-29).

As to Claim 11, **Szlam** teaches the method of claim 1, further comprising updating a customer file (Col. 8, lines 21-25).

As to Claim 12, **Szlam** teaches the method of claim 1, further comprising maintaining a history of recorded scripts played (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

As to Claim 13, **Szlam** teaches the method of claim 1, wherein initiating a call is executed by one of a human agent and a computer dialing system (Col. 6, lines 18-20).

As to Claim 14, **Szlam** teaches the method of claim 1, wherein interleaving further comprises listening by the human agent to a response from the contact (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

As to Claim 15, **Szlam** teaches the method of claim 1, wherein interleaving further comprises selecting and presenting content to the contact (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

As to Claim 16, **Szlam** teaches the method of claim 15, wherein interleaving further comprises posing a question following presenting content (Col. 2, lines 1-8, Col.3, lines 48-51, Col. 9, line 51- Col. 10, line 8).

As to Claim 17, **Szlam** teaches the method of claim 1, wherein interleaving further comprises deciding on intervention (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

As to Claim 18, **Szlam** teaches the method of claim 17, wherein deciding on intervention is done by the human agent (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

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As to Claim 20, **Szlam** teaches the method of claim 17, wherein deciding on intervention further comprises determining to provide a live-voice response (Col. 8, lines 45-58).

As to Claim 21, **Szlam** teaches the method of claim 17, wherein deciding on intervention further comprises determining to provide a recorded response (Col. 8, lines 45-58).

As to Claims 76-80,83-93, with respect to Figures 1-4E, **Szlam** teaches a computer readable medium having stored thereon computer executable instructions for performing a method for contacting a customer, the method comprising:

- providing an integrated system for hybridized interaction with a contact, the interaction being selectable between human and computer delivery(Col. 9, line 51- Col. 10, line 8);

- initiating a call to the contact (Col. 9, lines 18-20);

- executing an interaction protocol to create an interaction with the contact (Col. 9, line 51- Col. 10, line 5); and

- allowing a human agent to interleave responses to the contact, said responses being selected from the group of a prerecorded messages [i.e., a recorded scripted response] selected by the agent (Col. 8, lines 45-58, Col. 9, line 51- Col. 10, line 8).

However, **Szlam** does not teach a recorded interjection selected by the agent. **Nakatsu** teaches a recorded greeting message [i.e., interjection] selected by the caller [i.e., agent] (Col. 9, line 63- Col. 10, line 12, Col. 11, lines 43-46). Having the cited analogous art at the time the invention was made, it would have been obvious to one of ordinary skill in the art to add a recorded interjection selected by the agent to **Szlam's** invention for agents to transparently

communicate with customers as taught by **Nakatsu**'s invention in order to provide agents with monitoring of customers responses.

15. Claims 5 and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Szlam** in view of **Nakatsu et al.** further in view of **Rogers et al.** (US 5,946,386).

As to Claim 5, **Szlam** teaches the method of claim 1, wherein the recorded script comprises a prerecorded script (voice waveform created independently) from the human agent;

**Szlam** in view of **Nakatsu** does not teach the following limitation:

“voice waveform created independently from the human agent”

However, it is obvious that **Szlam** suggests the limitation. This is because **Szlam** teaches that scripts are prerecorded for use by a computer (Col. 8, lines 1-4). **Rogers** teaches creating VIP rules (scripts) by users (agents) and/or organizations. VIP rules created by organizations are independent of users (Col. 36, lines 12-17 and Col. 34, lines 56-67). Having the cited art at the time the invention was made, it would have been obvious to one of ordinary skill in the art to add organization scripts to **Szlam**'s invention in view of **Nakatsu** for supporting organizations sales calls as taught by **Rogers**' invention in order to provide enhancement of sales opportunities.

As to Claim 82, **Szlam** teaches the method of claim 1, wherein executing an interaction protocol further comprises:

**Szlam** in view of **Nakatsu** does not teach the following limitation:

“logging on by an agent”

However, it is obvious that **Szlam** suggests the limitation. This is because **Szlam** teaches call handling by agents (Col. 8, lines 1-4). **Rogers** teaches users (agents) logging in (Col. 34, lines 30-35). Having the cited art at the time the invention was made, it would have been obvious to one of ordinary skill in the art to add agent login incapability to **Szlam**'s invention in view of **Nakatsu**'s invention for determining availability of users as taught by **Rogers**' invention in order to provide enhancement of sales opportunities.

16. Claims 6 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Szlam** in view of **Nakatsu et al.** further in view of **Rogers** further in view of **Miner et al.** (US 5,652,789).

As to Claims 6, 28, **Szlam** teaches the method of claim 5, wherein the voice waveform further comprises:

**Szlam** in view of **Nakatsu** further in view of **Rogers** does not teach the following limitation:

“an audio track of a voice response recorded by a voice actor”

However, it is obvious that **Szlam** suggests the limitation. This is because **Szlam** teaches that scripts are prerecorded for use by a computer (Col. 8, lines 1-4). **Miner** teaches creating commands and tasks (scripts) with personalities (voice actors) for use by subscribers customer service representatives (Col. 45, lines 46-57). Since **Szlam** and **Miner** are in analogous customer service representative art at the time the invention was made, it would have been obvious to one of ordinary skill in the art to add personality scripts to **Szlam**'s invention in view of **Nakatsu**'s invention further in view of **Rogers**' invention for supporting organizations sales calls as taught by **Miner**'s invention in order to provide enhancement of sales opportunities.

17. Claim 81 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Szlam** in view of **Nakatsu et al.** further in view of **Miner et al.** (US 5,652,789).

Claim 81 is rejected for the same reasons as discussed above with respect to claim 6.

18. Claims 101 and 110 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Szlam** in view of **Miner et al.** (US 5,652,789).

As to Claims 101,110, **Szlam** teaches the method of claim 5, wherein the voice waveform further comprises:

**Szlam** does not teach the following limitation:

“an audio recording comprises a voice response recorded by a voice actor”

However, it is obvious that **Szlam** suggests the limitation. This is because **Szlam** teaches that scripts are prerecorded for use by a computer (Col. 8, lines 1-4). **Miner** teaches creating commands and tasks (scripts) with personalities (voice actors) for use by subscribers customer service representatives (Col. 45, lines 46-57). Since **Szlam** and **Miner** are in analogous customer service representative art at the time the invention was made, it would have been obvious to one of ordinary skill in the art to add personality scripts to **Szlam**'s invention for supporting organizations sales calls as taught by **Miner**'s invention in order to provide enhancement of sales opportunities.



***Conclusion***

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MD S. ELAHEE whose telephone number is (571)272-7536. The examiner can normally be reached on Mon to Fri from 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (571) 272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Primary Examiner,  
Art Unit 2614  
December 18, 2008